

REMARKS

The Examiner rejected claims 1-3 and 6-10 under 35 U.S.C. § 103(a) as being unpatentable over Parker (U.S. Patent No. 5,822,520) in view of Chang (U.S. Patent No. 6,327,637); rejected claims 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Parker and Chang in view of Warren (U.S. Patent No. 6,381,721).

Claims 1-10 are pending in the application.

Rejection of Claims 1-3 and 6-10 under 35 U.S.C. § 103(a)

The Examiner rejected claims 1-3 and 6-10 under 35 U.S.C. § 103(a) as being unpatentable over Parker in view of Chang.

Regarding claims 1 and 6, neither Parker nor Chang nor their combination teaches or suggests “a port that allows communication by a test apparatus directly with any layer [of a communication system] that is higher than a first layer of the functional layers without the communication previously having to pass through the first layer.” The Examiner points to Parker’s Figures 6-9 and Chang’s abstract, but Applicant respectfully disagrees because both Parker and Chang expressly teach communication with external devices via the **first layer**:

Parker at column 9, lines 34-45: “. . . communication with one or more remote computers as shown at 814 over a computer network 816 (e.g., an **ethernet network**).” (emphasis added)

Chang’s Abstract: “Using a single, optional **PHY chip** or the integrated **PHY block**, the internal devices can also communicate with external 1394 devices.” (emphasis added)

Chang only teaches communication via a layer other than the first layer in the context of communication between internal devices, in which case there is no “port that allows communication by a test apparatus directly with [a communication system].” See Chang’s Abstract: “Logic . . . is disclosed which enables multiple **internal** . . . 1394 devices, to communicate with each other without an intervening physical layer.” (emphasis added)

Also, with regard to the *Graham* factors, and particularly the scope and content of the prior art (MPEP § 2141), Applicant notes that the Examiner mischaracterizes Chang as teaching

“communication . . . directly with any layer that is higher than a first layer.” Chang only teaches communication via the link layer, not *any* layer.

For these reasons, claims 1 and 6 are not rendered obvious by Parker in view of Chang. Accordingly, Applicant requests that the rejection of claims 1 and 6 under 35 U.S.C. § 103(a) be withdrawn.

Claims 2-3 and 7-10 are allowable because they depend from claims 1 and 6 respectively, both of which are allowable for the reasons discussed above. Accordingly, Applicant requests that the rejection of claims 2-3 and 7-10 under 35 U.S.C. § 103(a) be withdrawn.

Rejection of Claims 4 and 5 under 35 U.S.C. § 103(a)

The Examiner rejected claims 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Parker and Chang in view of Warren.

Claims 4 and 5 are allowable because they depend from claim 1, which is allowable for the reasons discussed above. Furthermore, the addition of Warren to Parker and Chang does not teach or suggest “a port that allows communication by a test apparatus directly with any layer [of a communication system] . . .” for the reasons discussed above.

For these reasons, claims 4 and 5 are not rendered obvious by Parker and Chang in view of Warren. Accordingly, Applicant requests that the rejection of claims 4 and 5 under 35 U.S.C. § 103(a) be withdrawn.

Conclusion

In view of the foregoing remarks, allowance of claims 1-10 is urged, and such action and the issuance of this case are requested.

Respectfully submitted,

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